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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MKB/171102

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on March 10, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly concluded that the petitioner did not meet a level of care requirement for the Katie Becket Program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], RN  
Bureau of Long-Term Support  
1 West Wilson

Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Waukesha County.

2. The petitioner is a five year old girl who has been enrolled in the Katie Beckett Program under the Nursing Home level of care since October 1, 2012.
3. On January 5, 2016 the Department sent the petitioner a notice stating that she no longer met the level of care requirement for the Katie Beckett Program.
4. On February 1, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. The petitioner submitted documentation in anticipation of the scheduled hearing. The first scheduled hearing was postponed for the petitioner to provide this information to the Department for review. The Department reviewed the information, and still concluded that the petitioner did not meet the level of care requirement for the Katie Beckett Program.
6. The petitioner is a five year old girl who was diagnosed with Primitive Neuroectodermal Tumor of the Brain in December of 2012. She underwent a total resection of the tumor in December of 2012. She then received three courses of induction multi-agent chemotherapy followed by three cycles of high dose chemotherapy and stem cell rescue treatment. On her most recent MRI there is no evidence of disease. She will continue to have MRIs every six months for the next ten years. Although the petitioner is cancer free, she now has a Non Verbal Learning Disorder, Borderline Cognitive Abilities, Symptomatic Localization-related Epilepsy, and High Frequency Hearing Loss.

### **DISCUSSION**

The purpose of the "Katie Beckett" waiver is to encourage cost savings to the government by permitting disabled children, who would otherwise be institutionalized, to receive MA while living at home with their parents. Sec. 49.47(4)(c)1m, Wis. Stats. The agency is required to review Katie Beckett waiver applications in a five-step process. The first step is to determine whether the child is age 18 or younger and disabled. Petitioner continues to meet this first standard. The second step is to determine whether the child requires a level of care that is typically provided in a hospital, nursing home, or ICF-MR. The agency determined that petitioner does not require this level of care. (The remaining three steps are assessment of appropriateness of community-based care, costs limits of community-based care, and adherence to income and asset limits for the child.)

The Department developed a policy manual, issued in January, 1993, which defines and describes childhood care levels. See Katie Beckett Program Policies and Procedures. The levels now can be found on the internet at [www.dhs.wisconsin.gov/bdds/waivermanual/CLTS\\_LOC.pdf](http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf). There currently are four levels of care: hospital, SED, nursing home, and care facility for the developmentally disabled (ICF-DD).

The DHS has developed policy, found at Appendix A-10 to Bureau of Long-Term Support Medicaid Home & Community-Based Waivers Manual, which defines and describes those childhood care levels and contains the requirements needed to qualify for Child's Long Term Support Programs. This manual was updated in 2011. In brief those are (all emphasis in the original):

- **Hospital Level of Care**

A child with a Hospital – Physical Disabilities (PD) Level of Care has needs that are typically met in an in-patient medical hospital setting. The child's medical needs must be chronic, persistent and expected to last at least six months from the date of review. The skilled care needs cannot be acute and of a short-term duration. *The frequency and complexity of the required skilled medical interventions must be so substantial that without these direct, continuous skilled medical interventions, the child is at risk of institutionalization within a long-term, in-patient medical hospital.*

- Psychiatric Hospital Level of Care

The child with a Psychiatric Hospital - Severe Emotional Disturbance (SED) Level of Care has a long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist. In addition, this child demonstrates persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community. The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization. A child may be assigned this level of care if the child meets **ALL FOUR of the criteria listed** below for Severe Emotional Disturbance. The criteria are:

1. The child has a Diagnosis of a mental health condition; and
2. The child's mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific Duration of time; and
3. The child is in need of Involvement with Service Systems related to mental health support; and
4. The child exhibits Severe Symptomology or Dangerous Behaviors at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

- Intermediate Care Facility for Developmental Disabilities (ICF-DD or ICF-MR)

A child with an ICF/MR - Developmental Disability (DD) Level of Care has a permanent cognitive disability, substantial functional limitations and a need for active treatment. The level of care criteria is based upon the child having needs similar to people in an intermediate care facility for children with mental retardation (ICF/MR). The intensity and frequency of required interventions to meet the child's functional limitations must be so substantial that without the intervention, the child is at risk for institutionalization within an ICF/MR.

A child may be assigned this level of care if the child meets **ALL THREE** of the criteria listed below for Developmental Disability. The criteria are:

1. The child has a diagnosis of a Cognitive Disability that substantially impairs learning and that is expected to continue indefinitely; and
2. The child demonstrates Substantial Functional Limitations when compared to age appropriate activities that are expected to last a year or longer; and
3. The child has the Need for Active Treatment. (emphasis in the original)

- The Nursing Home Level of Care

The child with a Nursing Home - Physical Disabilities (PD) Level of Care has a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living at home and in the community. This child requires an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. The special medical needs warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children. The intensity and frequency of required skilled nursing interventions must be so substantial that without direct, daily intervention, the child is at risk for institutionalization within a nursing home.

Taken from Appendix A-10 to Bureau of Long-Term Support Medicaid Home & Community-Based Waivers Manual

I also note that the agency has the burden of proof in a benefit discontinuance case. See, e.g., *State V. Hanson*, 98 Wis. 2d 80 (Wis. App. 1980). That burden is the preponderance of the credible evidence. If the agency presents a prima facie case supporting its position the petitioner may rebut that case.

The petitioner previously qualified for the Katie Beckett program under the nursing home level of care. The petitioner had brain cancer and underwent extensive chemotherapy for several years. While she was undergoing this care, she was eligible under the nursing home level of care. The petitioner is now cancer free. The petitioner's mother and a social worker from the pediatric oncology unit seemed to agree that the petitioner is no longer at a nursing home level of care. There is also no contention that the petitioner meets either the nursing home or psychiatric hospital levels of care.

The issue now is whether the petitioner qualifies under the ICF-DD level of care. She has residual damage from her brain cancer and extensive chemotherapy treatment. The petitioner now has a Non Verbal Learning Disorder, Borderline Cognitive Abilities, Symptomatic Localization-related Epilepsy, and High Frequency Hearing Loss. The petitioner's full scale IQ is a 74. This is the fourth percentile. Although her full scale IQ is low, she functions very well in many areas, for example, her conceptual skills, social skills, and practical skills range from the 61<sup>st</sup> to 90<sup>th</sup> percentile. She struggles in anything that requires spatial skills. However, she is verbal, is understood when she speaks, she recognizes most colors, three shapes, recites the alphabet and can root count up to 18. She is friendly, plays with friends, and can do pretend and imaginative play. She has occupational and speech therapy.

The neuropsychological intake form states that the petitioner verbal abilities improved significantly over the last year. She continues to be borderline in the visual-spatial domain. Still, she has not regressed in that area. She was more hyperactive, and is noted as being at risk for ADHD, however, there was no diagnosis of a behavioral disorder from that examination. The petitioner has NLD, which is a neuropsychological syndrome consisting of difficulties in visual-spatial processing, visual-motor coordination, tactile perception, attention, abstract reasons, problem-solving, perception of emotions, and social communication. A child with NLD will not show all these characteristics, but may show many.

A review of the petitioner's K4 report card shows that she can at least occasionally demonstrate all the skills or concepts except recognize upper case alphabet letters in random order, "writes" with interest and enjoyment, prints first name, understanding of the concept of positional words, rote counts to 20, makes groupings of objects to 10, and recognizes names and numerals randomly to 10. The petitioner is able to at least occasionally complete the remaining 33 skills. Many of these skills she can complete consistently.

The developmental disabilities level of care is meant for a child who has needs similar to people in an intermediate care facility for children with mental retardation (ICF/MR). The intensity and frequency of required interventions to meet the child's functional limitations must be so substantial that without the intervention, the child is at risk for institutionalization. The petitioner clearly has some limitations. She has active family participation. Her family is doing everything they can to help her improve, and to make her better. Most weighing toward eligibility is the petitioner's full scale IQ, however, when that is reviewed with all the evidence, the petitioner does not meet this level of care requirement.

### **CONCLUSIONS OF LAW**

The agency correctly concluded that the petitioner did not meet a level of care requirement for the Katie Becket Program.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

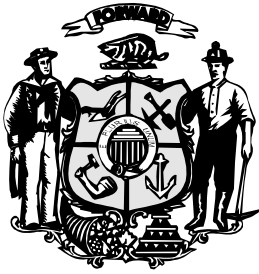
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of April, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 18, 2016.

Bureau of Long-Term Support  
Division of Health Care Access and Accountability